

TCEQ DOCKET NO. 2015-1707-MWD

APPLICATION OF SOUTH CENTRAL	§	BEFORE THE TEXAS COMMISSION
WATER COMPANY FOR RENEWAL	§	
OF TPDES PERMIT NO. WQ0014988-	§	
001 IN COMAL COUNTY	§	ON ENVIRONMENTAL QUALITY

**Response of South Central Water Company to Protest for Renewal of TPDES WQ
0014988-001 in Comal County**

Comes now South Central Water Company (South Central), the Applicant for renewal without change of the above referenced Water Quality Discharge Permit, by and through its undersigned attorney of record, Mark H. Zeppa, and submits its Response to Protest and Public Comments on the Application received by the TCEQ, which served copies of the same on South Central. This response shall also contain South Central's Response to the Response of the Executive Director and draft TPDES permit as filed in this case.

I – STANDING

In order to have standing to request a contested case hearing on a wastewater permit application, the person or entity filing a protest/hearing request must have legal standing to petition the TCEQ for relief under the Commission's procedural rules. To summarize those rules, the person must have a personal interest in the subject matter which is unique to the protestant and which is not shared universally by the general public. This rule applies to all persons. South Central respectfully submits that none of the individuals submitting protests or public comments on the TPDES renewal application have demonstrated that this application affects them personally in any way. None of these protestants has shown a unique and personal interest in the application that is different than the interest of the general public in the subject matter. While a few have claimed in their protests that they have personal knowledge of the existence of a sensitive aquifer they claim is or will be impacted by the wastewater treatment plant (WWTP) associated with this permit, these professions of knowledge are conflicted by various protestants. One says he knows the WWTP and/or effluent discharge route is in the Edwards Aquifer region. Another protestant claims personal knowledge that the WWTP and/or the discharge route is only in proximity to the Edwards Aquifer. No protestant claims that the WWTP or the effluent discharge route actually come into contact with property owned by them or state waters that cross their property. At best, the protestants have expressed a fear that some event may occur at the WWTP that is designed, constructed, and operated in conformance with TCEQ Chapter 217 rules, Water Code Chapter 26, and the renewed

permit, that will adversely impact the Edwards Aquifer or Cibolo Creek. As many of the protestants have stated, their concern is to the proliferation of wastewater treatment plants in and around Comal County. A fear is not unique to an individual but is merely an emotion that can be shared by the general public. Fears, as expressed by the protestants in this case, do not convey standing to participate in a TPDES renewal docket. Requests for the TCEQ to review or change the laws governing water quality over the Edwards Aquifer or in Cibolo Creek cannot be considered in a permitting case and do not convey standing to the protestants. The proper forums to change the laws affecting WWTPs in this region are the Texas Legislature or a TCEQ rulemaking petition.

In addition, a regulatory body such as a state agency, federal agency, or affected city with regulatory powers over the subject matter may request a contested hearing if the areas of their concerns fall within the parameters of their regulator authority on the subject matter. There are no such public entities requesting a hearing in this case.

In addition to these persons or regulatory bodies, the Executive Director and the Public Interest Counsel have automatic standing under the Texas Water Code in all permitting dockets. To date, only the Executive Director has appeared in this case. He has not requested this application be submitted for contested hearing. In fact, the Executive Director, through his draft permit and responses to public comments, has recommended that the application to renew the existing TPDES Permit for a wastewater treatment plant in western Comal County near the City of Bulverde be approved.

II – ISSUES RAISED IN PUBLIC COMMENTS

The TCEQ Executive Director has prepared and filed his responses to public comments, and they are included in the public record which the TCEQ Commissioners may consider when deciding if a contested case hearing will be held and if so, who shall have standing and be named a party. The Executive Director's responses and the draft permit are also properly before the Commission for the Commissioners to decide whether this application may be granted without hearing and the existing permit may be renewed through the approval of the draft permit prepared by the Executive Director.

South Central has reviewed the Executive Director's responses in the draft permit and concurred in them. South Central has no objection to a final order approving the draft permit as proposed by the Executive Director.

South Central will address the public comments referred to it by the TCEQ below:

1. Michael L. Maurer, Sr. – Mr. Maurer has protested the renewal application based upon a concern that silt will leave the WWTP construction site. Stormwater and silt effects are not subjects upon which the TCEQ may act in a TPDES permitting docket. These matters are covered by other TCEQ rules which South Central fully

intends to comply with. Mr. Maurer complains about the amount of treated effluent that will flow into Cibolo Creek and the lack of proper long-term diagnosis of that effluent on aquatic life. The issue of quantity of effluent goes to the issue of need for a treatment plant. There are subdivisions creating that need that are awaiting construction of a central sewer system that can meet their needs. Notice to all relevant neighboring utilities was given and no existing sewer service purveyor other than South Central has shown any interest in serving these properties. As to the effect of the effluent on aquatic life, these matters have been studied and are established in the TCEQ's water quality rules as they apply to specific stream segments of public waters. These rules were applied to this WWTP when the permit was originally issued. As demonstrated in the Executive Director's responses, these same water quality standards have been applied on this application. The Executive Director has found that the public waters will be protected. The TCEQ may not rewrite its own rules and apply them after the fact as apparently being suggested by this protestant. The Edwards Aquifer will be protected by this plant under this permit. Mr. Maurer submitted multiple protests in which he has made it perfectly clear that he opposes any new WWTPs on the Edwards and Trinity Aquifers. This concern is one that is not unique to Mr. Maurer and could be held *in arguendo* by the general public. It is a matter for prospective rulemaking or legislation and is not a subject that can be addressed in this case.

2. Erin Cantu – Ms. Cantu has requested a public meeting because many citizens in her opinion are concerned about this WWTP and how it will affect their property, the Bulverde Area Humane Society and the Edwards Aquifer. She has complained about the lack of information on this application available to the public by the City of Bulverde. The City of Bulverde has no jurisdiction over this matter and Ms. Cantu's ability to obtain information from the City is irrelevant to the TCEQ's action on the application. Ms. Cantu has not identified any concern raised in her protest that is unique and affects her directly as an individual and not as a self-appointed spokesperson for the unnamed "many citizens." Ms. Cantu has complained about the routing of the discharge of the treated effluent, claiming the Edwards Aquifer could be affected by a "possible failure of the pipes or facilities." The original permit was issued under the TCEQ's Edwards Aquifer rules. Those rules have not been changed, and no material changes to the affected property, the proposed discharge route, the Edwards Aquifer or Cibolo Creek have occurred since the original permit was issued. This application to renew that permit without change still complies with those same rules.
3. Mr. Fred David Coones – Mr. Coones requests the TCEQ to review its regionalization policy and water quality standards for the Edwards Aquifer because of the "proliferation of wastewater treatment plants in Comal County in or near the recharge zone." This desire to change the law applicable to WWTPs and the

Edwards Aquifer may not be addressed in the manner requested by Mr. Coones in a TPDES renewal docket. It is a matter appropriately left for legislation or rulemaking.

4. Ms. Laura Coones – Ms. Laura Coones also requests the TCEQ to take a look at its regionalization policy and Edwards Aquifer water quality standards due to “the proliferation of wastewater treatment plants in Comal County in or near the recharge zone.” Like Mr. Fred David Coones, Ms. Laura Coones raises issues that may not be addressed in this case and which are properly the subject of legislation or rulemaking.
5. Mrs. Linda Coones – Mrs. Linda Coones’s protest was virtually identical to that of Ms. Laura Coones. This protest has already been adequately addressed and these comments will not be repeated.
6. P. Graham – P. Graham, who appears from his/her mailing address to be a resident of distant Kenedy County, complains that this application was noticed in a Travis County newspaper. He in no way provides information that the many types of public notice required by a TPDES renewal application have not been properly given. South Central respectfully submits that the notice requirements have been met. The Executive Director appears to concur in this conclusion. P. Graham, in a second protest, complains that the application does not identify the water body of the state into which the effluent will be discharged. However, P. Graham describes the route identified in the application and concludes that it is illegal to discharge treated effluent into Cibolo Creek. P. Graham gives no indication of how he/she comes by this knowledge or how this alleged illegal act affects him or her individually. In fact, it is not illegal to discharge treated wastewater effluent into Cibolo Creek so long as those discharges comply with state and federal permits and WWTP operating rules. P. Graham claims that this renewed permit will be the first of its kind impacting Cibolo Creek. This assertion is factually incorrect; there are a number of permitted WWTPs in the Cibolo Creek watershed. In fact, the Legislature has created the Cibolo Creek Municipal Authority well downstream on the Cibolo Creek to protect the watershed. Why would the Legislature create such an entity if existing law prohibited all discharges into Cibolo Creek? P. Graham, in his/her March 17, 2015 protest, claims that he/she knows the area and the proposed volume of treated effluent will be discharged across the Edwards Aquifer Recharge Zone undiluted. The effluent will be treated to standards set by the TCEQ that are the most stringent followed in the State and it makes no difference whether any dilution of the effluent occurs along any portion of the discharge route between the WWTP and the final receiving water, Cibolo Creek. Apparently, P. Graham does not recognize the natural dilution of rainfall over the land but, given recent drought years, his/her opinion on dilution from natural causes is not surprising.

7. Terrell Graham – Mr. Graham has renewed the request for reexamination of the TCEQ's regionalization policy and water quality standards previously presented by Ms. Laura Coones. His comments are virtually identical, so South Central's response to Ms. Coones will not be repeated.
8. Brenda Rowe – The TCEQ's Chief Clerk's service list attached to copies of the protests and public comments addressed above listed a Ms. Brenda Rowe of San Antonio as an interested person. No copies of Ms. Rowe's protest or public comments have been provided to South Central. South Central has diligently searched the TCEQ's database for communications from Ms. Rowe and could find none. Ms. Rowe is not identified in the Executive Director's responses. Therefore, the only comment South Central can make to Ms. Rowe is that she has not shown that she has standing to request a public hearing nor has she specifically identified issues which the TCEQ may consider in this TPDES renewal application.

III – PRAYER

For the reasons discussed above, South Central prays that the Commission find that no protest, hearing or public meeting request or request for party status has been submitted in this docket by anyone having standing under the TCEQ rules. Furthermore, South Central prays that the TCEQ find that no person or entity raised issues in opposition to this application which may be addressed in the context of a TPDES permit renewal docket. South Central prays that is application be approved and that the Executive Director's draft permit be issued without further delay.

Respectfully submitted,

LAW OFFICES OF MARK H. ZEPPA, PC

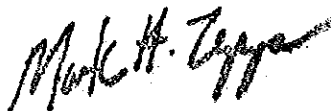
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